



Investment Office

P.O. Box 2749

Sacramento, CA 95812-2749

Telecommunications Device for the Deaf - (916) 795-3240

(916) 795-3400

March 17, 2008

AGENDA ITEM 9b

TO: MEMBERS OF THE INVESTMENT COMMITTEE

- I. SUBJECT:** Implementation of the "California Public Divest from Iran Act" (Cal. Gov. Code sec 7513.7)
- II. PROGRAM:** Total Fund
- III. RECOMMENDATION:** Information
- IV. ANALYSIS:**

Introduction

Assembly Bill Number 221 (AB 221, Cal. Gov. Code sec. 7413.7 and 16642) or the "California Public Divest from Iran Act" (the "Act") was introduced by Assembly Member Anderson during the 2007 legislation session. The CalPERS Investment Committee adopted and maintained an "oppose" position on the bill. On October 14, 2007, AB 221 was signed into law and it became effective on January 1, 2008.

The Act generally prohibits both the California Public Employees' Retirement System (CalPERS) and the California State Teachers' Retirement System (CalSTRS) from investing in companies with certain business operations in Iran. Although not identical, the Act is roughly parallel to the Sudan Divestment Act enacted in 2006.

The purpose of this agenda item is to inform the Investment Committee of the Act's provisions and of implementation plans.

Summary of the Act's Provisions

The Act prohibits CalPERS and CalSTRS from investing in a company with business operations in Iran that is invested in or is engaged in specified business operations. "Company" is broadly defined to include a variety of entities, including partnerships. (Sec. 7513.7(a)(3).) "Business operations" is also broadly defined as "maintaining, selling, or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Iran, including the ownership or possession of real or personal property located in Iran." (Sec. 7513.7(a)(2).)

The Act provides that CalPERS shall not invest public employee retirement funds in companies with the following specified business operations:

- The company is invested in or engaged in business operations with entities in the defense or nuclear sectors of Iran, or the company is invested or engaged in business operations with entities involved in the development of petroleum or natural gas resources of Iran, and that company is subject to sanctions under United States law pertinent to Iran; or
- The company has demonstrated complicity with an Iranian organization that has been labeled a terrorist organization by the United States government.

(Sec. 7513.7(b).)

Process Established by the Act

The Act sets forth a specific process and timeline for CalPERS to follow in implementing the Act.

- By June 30, 2008, CalPERS must determine which companies are "subject to divestment" under the criteria above. (Sec. 7513.7(c).)
- Once this determination has been made, notify subject companies that they are subject to the Act and permit them to respond. This notification will request that the company take "substantial action" within ninety days of the notification. "Substantial action" is defined in the Act as "a boycott of the government of Iran, curtailing business in Iran until [certain criteria are met]..., or selling company assets, equipment, or real and personal property located in Iran." (Sec. 7513.7(a)(9).)
- If a company makes significant progress towards substantial action within the ninety days, CalPERS shall continue to monitor the progress of the company until it takes substantial action. (Sec. 7513.7(g).)

- If a company does not make significant progress within the original ninety day period, or if a company that made significant progress within the ninety days fails to take substantial action within a year of notification, CalPERS shall proceed as follows:
 - CalPERS shall make no new or additional investments in the company
 - CalPERS shall liquidate the investments within eighteen months, in a manner consistent with its fiduciary responsibilities.
- (Sec. 7513.7(h).)

The Act provides for certain exceptions. Specifically, the Act does not apply to:

- A company that is primarily engaged in supplying goods or services intended to relieve human suffering in Iran.
- A company that promotes health, education, or journalistic, religious, or welfare activities in Iran.
- A United States company that is authorized by the federal government to have business operations in Iran.

(Sec. 7513.7(l).)

In addition, the Act provides that “[n]othing in this section shall require the board to take action . . . unless the board determines, in good faith, that the action described in this section is consistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution.”
(Sec. 7513.7(k).)

Finally, the bill requires the annual filing of a legislative report, with the first report due by January 1, 2009. (Sec. 7513.7(i).)

Next Steps

- Staff intends to retain a third party research firm to provide the necessary information and analysis to identify companies subject to the Act’s provisions.
- Staff will also develop a process for routinely screening the list of companies subject to the Act, and notifying and monitoring companies.
- Staff is in communication with CalSTRS regarding the Systems’ respective efforts and opportunities for collaboration.
- If after the notification and monitoring process, staff determines that there is a prohibition on future investment or that divestment is required, it will inform the Investment Committee, along with a fiduciary analysis and recommendation.
- Staff will provide periodic reports to the Investment Committee. The next report will be in August 2008, after subject companies have been identified.

V. STRATEGIC PLAN:

This item is not a product of the CalPERS Strategic Plan.

VI. RESULTS/COSTS:

Costs for implementation of the Act will include fees paid to the third party research entity, and staff time to review, notify, and monitor companies. Potential costs associated with possible divestment would include transaction costs and loss of capital as well as opportunity loss. In addition, staff anticipates additional costs associated with retaining fiduciary counsel to advise CalPERS on its fiduciary obligations relative to implementation of the Act.

Anne Stausboll
Chief Operating Investment Officer

Russell Read
Chief Investment Officer